IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2695 OF 1988

Bhanuprakash Bherumal Khandelwal .. Plaintiff.

Versus

M/s.Atulkumar & Co. & Ors. .. Defendants.

Mr.H.C.Mehta i/b.M/s.Mehta & Co. for plaintiff.

None for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 9TH JULY, 2007.

P.C.:

1. The plaintiff was engaged by the defendants as Technical Consultant for their project, details of which are more particularly set out in the plaint. The plaintiff is claiming remuneration for the services rendered which have been duly documented in the form of the contract between the parties, the running bills and the acknowledgements on the counterfoil / copy of the same. It has been pointed out that the work rendered by the plaintiff is not disputed inasmuch as there is a

writing of 1st July, 1985 admitting that such services were indeed availed of.

2. The suit was filed as a Summary Suit and pursuant to the appearance entered in, a Summons for Judgement was duly taken out. But after contesting the same and obtaining unconditional leave from this Court, the defendants have not bothered to file their points of defence / written statement within the time stipulated by this Court’s order.

3. It is in these circumstances, that this Court is constrained to put this matter on the list of "Undefended Suit / a suit where no written statement is filed".

4. On the last occasion, time was sought by the plaintiff to produce the original documents and an affidavit in lieu of examination-in-chief duly supporting the averments in the plaint and proving the existence as well as contents of all annexures thereto. Accordingly, such an affidavit has been filed and the plaintiff is present in the Court and is thus, ready to make himself available for cross examination.

5. The defendants are absent. Their name was duly

shown on Board alongwith that of their Advocate on the previous date as well. There is no defence to the claim in the suit nor is anybody present on behalf of defendants to cross examine the plaintiff.

6. It is in these circumstances that the Court can exercise its discretion under Order VIII of the Code of Civil Procedure and pronounce a decree. This discretion is being exercised because there is due compliance with the directions of this Court with regard to filing of the documents and the affidavit.

7. In these facts and circumstances, there shall be a decree as prayed. The originals are taken on record and marked as "X" for identification. Affidavits are also taken on record and marked as "Y" and "Y1" for identification. The suit stands decreed as prayed. Advocate’s costs to be computed as per rules so also the refund of Court fees, if any, as per rules.

8. All concerned to act upon an authenticated copy of this order.

(S.C.Dharmadhikari, J.)